IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINETEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 24426 of 2004

Between:

K.Kondal Rao, S/o.Venkanna,
R/o.Visakoderu Village, Plakoderu Mandal,

West Godavari District.

..... PETITIONER

AND

1 Government of A.P. rep.by its Principal Secretary,

Excise Department, Secretariat, Saifabad, Hyderabad.
2 Commissioner of Prohibition & Excise, Nampally,

Hyderabad.
3 Excise Superintendent, Prohbition & Excise Elluru,

West Godavari District.
4 Ramadevi Wines Licence No.636/98-99, Mypa,

Village Plakoderu Mandal, West Godavari District
rep.by its Licence Holder Sri.A.Yesu Babu,

R/o.Bondadapeta Kalla Mandal,
West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order, direction more particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent issuing proceedings in Cr,No.20268/04/CPE/G3 dated 20-12-2004 and in according permission to the 4th respondent for shifting of his I.L.24 liquor vend Licence No.636/98-99 from Mypa village, palakoderu Mandal, West Godavari District to Kumudavalli located within 2

KMs periphery of Bheemvaram Municipality as being illegal, arbitrary, unconstitutional and contrary to the provisions of the A.P.Excise Act and the Rules made thereunder and also opposed to the Excise policy notified by the first respondent and unconstitutional and pass such further order or orders.

Counsel for the Petitioner: MR.PATLOLLA VENKAT REDDY

Counsel for Respondent Nos.1 to 3: GP FOR PROHIBITION & EXCISE

Counsel for Respondent No.4: MR. K.CHIDAMBARAM

The Court made the following :

ORDER:

The petitioner challenges the order, dated 20.12.2004 passed by the 2nd respondent according permission to the 4th respondent for shifting the IL-24 shop from Mypa village to Kumudapalli of Palakoderu Mandal, West Godavari District. The grievance of the petitioner is that the proposal of the 4th respondent to shift the shop is contrary to the policy laid down by the Government and in particular to Rule 35 of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 (for short 'the Rules'). It is also his case that when he apprehended that respondents 2 and 3 would accord permission to the 4th respondent without considering his objections, he approached

this Court by filing W.P.No.21749 of 2004 and though a specific direction was issued therein to the effect that the 2nd respondent shall take into account the objection of the petitioner, the impugned order was passed in utter disregard of the same.

Heard learned counsel for the petitioner, learned Government Pleader for Prohibition and Excise and learned counsel for the 4th respondent.

The petitioner approached this Court on an earlier occasion by filing W.P.No.21749 of 2004, alleging that respondents 2 and 3 are attempting to accord permission to the 4th respondent to shift the shop in violation of the statutory rules and the policy. The writ petition was disposed of on 14.12.2004 with the following direction:

> "Hence, the writ petition is disposed of leaving it open to the petitioner to make a representation within ten days from today to the respondents pointing out his objections for shifting of shop by the 4th respondent. If such a representation is made, the respondents 1 to 3 shall take the same into account before according any permission to the 4th respondent to shift the shop. There shall be no order as to costs."

The 2nd respondent passed the order, dated 20.12.2004 according permission to the 4th respondent to shift the shop. Not a word is said about the representation of the petitioner or the order passed by this Court in W.P.No.21749 of 2004. Respondents 2 and 4 in this writ petition are parties to W.P.No.21749 of 2004.

Learned Government Pleader for Prohibition and Excise and learned counsel for the 4th respondent, submit that Rule 35 has been amended through G.O.Ms.No.815, dated 22.11.2003 and there does not exist any prohibition for shifting the shops to the area where the same licence fee slab or a higher slab applies. Learned counsel for the petitioner, on the other hand, submits that the Government issued G.O.Ms.No.844, dated 30.07.2003 restoring the earlier condition.

This Court is not inclined to go into the merits of the matter, at this stage. The impugned order was passed without taking into account the representation made by the petitioner, that too despite the specific directions issued by this Court.

Hence, the writ petition is allowed on that short ground and the impugned order is

set aside. It is, however, left open to respondents 1 to 3 to consider the application of the 4th respondent for shifting the shop and the objections raised by the petitioner for the same shall be taken into account before any permission is accorded. The matter shall be disposed of as early as possible. There shall be no order as to costs.

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19.01.2005

Note: Issue C.C. in three days.

(B/o)

Jsu

To

1 Government of A.P. rep.by its Principal Secretary,

Excise Department, Secretariat, Saifabad, Hyderabad.
2 Commissioner of Prohibition & Excise, Nampally,

Hyderabad.
3 Excise Superintendent, Prohbition & Excise Elluru,

West Godavari District.
4 2 CCs to the G.P for Prohibition and Excise, High Court

Buildings, Hyderabad(O.U.T).

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